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FOR PUBLIC AFFAIRS STAFF

PROGRAM The Diane Rehm Show

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SUBJECT Interview with Walter Karp on the Samuel Morison Case

DIANE REHM: A federal district court's decision last week in an espionage trial could have a major impact on First Amendment rights in this country. The case involves Samuel Morison. He was a former Navy intelligence analyst who leaked classified photographs of a Soviet aircraft carrier to a British magazine. The photographs were taken from a U.S. spy satellite several hundred miles away. The U.S. Government argues that the technology demonstrated by the photograph threatened the national security.

Mr. Morison was convicted on four counts of espionage and theft and faces up to 40 years in prison. Mr. Morison's attorneys are planning to appeal the court's decision.

In the studio with me this morning is Walter Karp (?), a contributing editor to Harper's magazine. He's the author of an article entitled "Liberty at Siege," which appears in the November issue of Harper's, now on the stands. He says the Morison case is part of a broader and systematic assault on the habits of freedom in this country.

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Good morning to you. It's nice to have you here.

WALTER KARP: Good morning.

REHM: It's always nice to react as promptly as this to a listener request. While the publisher and president of Harper's magazine, John Rick MacArthur, was on the show the other day, a listener called and said he had read your article and found it absolutely fascinating, and wondered whether we could

get you down. So it's good to have you here.

The Morison case has received comparatively little attention from the media. But the ACLU, which assisted Morison in his defense, says the case represents a serious assault on the First Amendment. Do you share that view?

WALKER KARP: I not only share the view, I'd even extend the view. I think it's a serious assault on the rights of a democratic people, their ability to hold the government accountable, to know what the government does, to be able to make some sense out of what happens in the public world. The Morison conviction is ushering in a system of secret government and irresponsible power that we've never had before in this country.

REHM: Let's go over some of the basic facts in the case. Mr. Morison's trial revolved around three photographs of a Soviet vessel under construction.

KARP: I think the main fact is that Morison is not a spy. The Administration, the Justice Department never said he was a spy, in the classic espionage sense. "Classic espionage" being their own phrase. In other words, he didn't secretly hand over vital secrets to a foreign power.

What Morison is -- and that's the reason we are talking about it right now -- Morison is the first person ever convicted under the Espionage Act for giving classified information to the press. And you have to hold your breath to understand the magnitude of that fact. It means that this is an act, giving classified information to the media -- that is, to the American people. That's what you're talking about. People read newspapers, so it's giving it to the readers of newspapers.

This is done probably a hundred times a day. We are talking about a deed that has been done ten thousand times in the last 20 years, while America flourished in freedom, which has overnight become a heinous felony. That is what the Morison conviction means.

REHM: Why was the case brought in the first place, then?

KARP: The case was brought because the Administration, the White House was looking for some way to use the Espionage Act as a weapon to shut down leaks of classified information. They have a memorandum about it circulating as far back as 1982. I guess Morison looked like an ideal case.

When he was arrested on October 1st, 1984, I mean there was no question, no serious question about Morison disclosing damaging information. The three satellite photographs -- the

Soviet Union had seen photographs of that satellite before. They'd already been out. Photographs taken from that satellite had already been published before Morison.

REHM: So you're saying that the publication could not in any way have in fact affected the national security.

KARP: Yes. The Administration never -- the Justice Department could not deny that, either. They just said that they were not authorized disclosures. But anyway, the Soviet Union knew about it.

The Soviet Union owns a tech -- possesses a technical manual of the operations of that satellite. So it knows the satellite in the greatest detail.

There wasn't even a question of surreptitious transfer of the photographs. Morison is an editor of Jane's Defense Weekly, and he gave them these three photographs, which they duly published. I mean a child could figure out where they came from.

REHM: On the cover of their magazine.

KARP: Right.

So, the only question was whether the Administration could find a judge sufficiently lacking in judicial restraint -- judicial restraint is a virtue which the White House preaches the way Tartuffe preached virtue. They wanted a judge sufficiently lacking in judicial restraint to become the first judge to rule that the Espionage Act applies to disclosing classified information to the press. A judge so ruled on March 12th, 1985. And the result is the conviction.

In other words, what you have is virtually a new judge-made law. And let me say very clearly what this law is. The law means that it is now a crime punishable by ten years in prison to inform -- to give the American people information about national defense which the government wants to conceal from the American people. It's as broad as that.

REHM: Did the publication of the photographs cause much of a stir at the time?

KARP: No. No stir at all. I think the Justice Department said, "Ah-ha. Here is something we can do something about."

But the idea of using the Espionage Act, an effort to find some way to stretch it to cover ordinary leaks of information to the press -- that's routine activity, mind you. I can't

impress on you more -- people in Washington usually do know that very well. You could hardly talk about national defense without disclosing something. And that's because 15 million documents every year are classified. We're not talking about the secret codes of the United States. We're not talking about the Norden bomb site. That was my childhood idea of a secret. We're not talking about vital secrets held in a safe. You're talking about things stamped "classified" by someone in the Executive Branch. And that is an enormous -- that is now a crime to reveal any of that information.

REHM: Well, the other rather troubling part about what you're saying, Mr. Karp, and certainly what you include in your article, is that espionage now becomes -- what is released as information in this country to the press becomes equated with the release of very secret documents to a foreign country.

KARP: Yes.

REHM: In other words, we, the American public, become the forbidden audience.

KARP: Yes. Under this new judge-made Espionage Act, because it's a new law, under this new law, the American people are a foreign government. And people who -- men of honor, very often men of honor -- I don't say Morison is one -- but men of honor who try very hard in the Pentagon to inform the people -- that is often patriotic men who see waste and corruption in the Pentagon...

REHM: You're talking about Ernie Fitzgerald.

KARP: Yes. But he's protected because he's famous. A lot of other people are not so famous. Whistle-blowers I'm talking about. Right. Honorable men, not time-servers, honorable men can now be treated as spies. That's the bitterest irony of this whole case.

And I would like to go on further to say, you know, when organizations, civil rights organizations talk about the First Amendment, chilling effects, and official secrecy acts, that's the kind of language or jargon of the civil liberties profession, if I may say so. But it comes -- what's happening, I think, comes home to people more clearly when you realize part of what's intended here, what the Administration has in mind to conceal. It's not just an idle love of secrecy, although they do have a passion for secrecy in general.

It is now a crime to give to the American people information about national defense, a crime punishable by ten years in prison, information about national defense which the

Executive chooses to conceal, as I said. Okay. Now, what do they choose to conceal? What's new?

In 1982, the White House made very clear the kind of information they would like to have concealed which was not concealed before. The President signed an executive order in April 1982 which added a whole new category of concealable, classified information. In other words, they ordered the bureaucracy to conceal -- I will now read to you -- to conceal information about, I quote, vulnerabilities or capabilities of systems, installations, projects or plans relating to the national security.

Now, the first thing about that vast category is, as Congressman Glenn English said, you can classify a U.S. road map, under that category. What was also pointed out at congressional hearings is that vulnerabilities or capabilities is a wonderful phrase for concealing bad weapons, fraudulent weapons, overly -- in fact, the whole scandal-ridden trillion dollar buildup.

Now, the problem -- it's one thing to put a secrecy stamp on that kind of information. It's quite another thing to keep it secret. There are people, time-servers, there are time-servers in the Pentagon. They see waste flying by them, tens of billions of dollars flying out the window. I'm using the figures of Senator Grassley, a conservative Republican from Iowa. They see that and they shrug their shoulders. They don't care. But there are men of honor, as I said, who go to Congress, who go to the press and go to the people with the sordid evidence of profligate waste that's been going on for four years.

Now -- and that, I think, is the reason, the real and most fundamental driving reason why the Administration has sought to find some way to use the Espionage Act. They needed a threat of ten years in prison to silence men who would not be silenced any other way.

REHM: So, as far as you are concerned, the kind of judgment applied to Walter -- in the Walter Morison case could in fact be extended to apply to whistle-blowers who inform the press about classified information which they think is hurting the American public.

KARP: True. It makes it a crime to do so.

REHM: Walter Karp is with me. He is a contributing editor of Harper's magazine and author in the November issue of an article called "Liberty under Siege."

Mr. Karp, I remember Caspar Weinberger talking to the scientists of the country about the publication of what he

believes is technological information that the Soviets could make use of. Is this another aspect of this problem, as you see it?

KARP: Certainly. Absolutely. The Defense Department issued regulations in December 1984 which said that any information in the Pentagon about, quote, contractor performance evaluation -- that means cost overruns, probably -- and tests of military hardware -- I'm quoting the regulation -- must be withheld, kept inside the Pentagon -- now, this is not even classifiable stuff, actually -- if they are, quote, likely to be disseminated outside the Department of Defense.

Now, the plain English of that is, if it's someone which the American people would like to read about, then, for that very reason, it must be concealed from them. And what is the regulation based on? The Export Control Act of 1979. The American people are now -- to give them information about cost overruns is exporting technical data to the American people.

REHM: It would be funny if it weren't so serious.

KARP: It's very serious.

REHM: Where is the press in all this? Do you see the press cowering in the face of the close-down of information?

KARP: Well, the Washington Post carried the Morison conviction on the front page. The New York Times tomorrow is going to carry a hard-hitting story about the Morison conviction by me. So -- but I would say, in general, that the press has been very, very feeble.

I have a line in my article, which is perhaps too harsh. I said, "Tyranny is not news. That is the journalistic principle of the day." It's certainly not front-page news. Why that should be the case, I think, may carry us afield.

The press has no power. The press simply conveys what politicians talk about. When politicians, public men, elected officials, congressmen, congressional committees, subcommittees don't hold hearings, don't hold press conferences, don't make noise, the press has nothing to report. You cannot cover -- the Morison conviction, even the Morison conviction, cannot be made a major issue in the press if nobody, if no congressman says a word about it. And there's a limit to how often you can cite civil libertarians.

REHM: The only other espionage prosecution involving a disclosure to the press was that of Daniel Ellsberg. And in that case involving the Pentagon Papers, the case was thrown out of court because of prosecutorial misconduct.

How often do members of the press receive classified information from government sources? And is this conviction in the Morison case going to put a clamp on that?

KARP: Well, you have a transaction which is so common that the New York Times, in an editorial, estimated it to be about a hundred times a day leaks are given to the press. Every single leak like that regarding national defense, which of course is enormous, regarding national defense is now a crime, under the new judge-made Espionage Act. And if you think that people are going to risk ten years in prison to do it, you're mistaken. Of course, the Administration expects them not to.

REHM: What about the appeals process? How likely are we to see a reversal of this?

KARP: There, I have no idea. I have no idea at all.

I would say this: The Justice Department was saying, actually almost as if it were a matter of boasting, that they haven't prosecuted a newspaperman. That's what the prosecutor said. He said, "We haven't prosecuted a newspaper, so we're really wonderful friends of liberty." See.

The fact of the matter is that the press is now open to terrific harassment. I mean that's speculating. I can't say that they will be. But every time a leak appears in a newspaper, the FBI can walk in and say they're investigating an espionage crime. And then what's a newspaper going to do?

REHM: In your article, which is in the November issue of Harper's, you really present a chronicle and you say, "What we are witnessing," you're quoting the American Civil Liberties Union in November 1982, "is a, quote, systematic assault on the concept of government accountability and deterrence of illegal government conduct."

Then you begin, in 1981, moving up to the present, showing -- and I gather you were very careful about the examples that you chose.

KARP: Well, I wrote a report, really, a chronicle in chronological order describing actions of the Administration, executive orders issued, laws proposed, regulations enacted or proposed. And so that the whole article, which is very, very long, is an effort to show men acting. See, it puts -- every single item in there has actually been in a newspaper at one time or another. I don't think any well-informed person has ever -- has found anything in there that he didn't know about. But all came out vaguely. It all came out as some sort of a vague, shadowy miscellany.

REHM: And disjointed.

KARP: And very disjointed. And I just put it together in chronological order. And the reason I was very careful to put it together in that careful way is that in the country nowadays, it's very easy to dismiss almost any criticism by saying it's conspiratorial or paranoia. I mean anytime you want to say that anybody has an intention, any powerful person has any intention, besides the ones he admits in public, you're liable to be damned as a screwball. So I took very good care that this chronicle of the Administration's effort to get the people off the back of the government, because that's what we're dealing with now -- exactly the opposite of the Administration's slogan, their campaign for four years -- is to get the people off the back of the government, to liberate the government from the government.

REHM: All right. Let's open the phones....

Good morning.

MAN: I was wondering if your guest had mentioned the method which Mr. Morison had used to obtain his photographs.

KARP: No, I didn't.

MAN: Well, would you like to mention that?

KARP: I don't know.

MAN: You don't know.

KARP: I assume they came across his desk, as a naval researcher.

MAN: Well, obviously, he has been stretching his rights as a naval researcher to obtain these photographs. And I was wondering if you really seriously felt that the American media should decide what is classified and what is not classified and release it to the American people, which means the Soviets will receive it.

KARP: Well, the American media doesn't decide, decide it. But we're not talking about -- we're not really talking about the rights or non-rights of employees or the media. We're talking about the American people and their ancient sovereign right to hold the government accountable to them. We have a system of classification which is based on executive orders and nothing but executive orders, which is arbitrary, which is capricious, which has been expanded over the years. And if you are the kind of person who trusts the government to judge for itself what secures or endangers your freedom, then I'm afraid

that you fly in the face of 200 years of constitutional history of the United States.

REHM: All right, sir. Thanks for calling.

That question of how those photographs came into the possession of Mr. Morison, how much was that an issue at the trial?

KARP: It's not an issue at all. It's not an issue at all, because he -- the issue is simply whether or not the Espionage Act applies to giving information that is classified to the press. It doesn't matter if Morison went next door and filched it from somebody's desk or he got it over his own -- if it came to him. He still is not authorized to give it to the press, whether it came over his transom for whether he took it out of his friend's desk. That was not an issue in the case. The issue in the case is whether, however he -- whether or not his giving it to a publication qualifies as an act of espionage. And for the first time in history, it was ruled to count that way, after 68 years.

Shall I go on?

REHM: Go ahead.

KARP: What you have is, we have a country in which we have an enormous, colossal, and very, very peculiar classification system built on executive order. The way in which national security and liberty will balance out was by a kind of unspoken agreement that they'll classify everything and they'll leak a lot of it. See, that's how the people's right to know and the government's ability to conceal important matters were somehow balanced.

This Espionage Act by the judge, this effort by the Administration destroys that balance. It's like taking a hand and smashing it over a scale and just knocking it aside.

REHM: Good morning.

MAN: I've been waiting for a conversation like this for some time. As a former nuclear submariner and a person who has had access to high levels of classification, let me just state that it's fortunate that there are a vast majority of people who do not seek to line their pockets a little more fully by releasing information which they have access to [unintelligible] and people like your guest, who, you know, are trying to basically take the law into their own hands in regard to classified information. There are many people who could release information to the press that would, you know, basically blow the socks off

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of anything you've ever read or published because it's very highly classified. Fortunately, they guard that information with great care.

To take your guest's premise to a ridiculous extreme, because I do not like the prices of certain products in stores, that, taking your guests premise to the extreme, would mean that I could go in and say, "Well, that's unfair." I will take the item and not pay for it because it's not worth it, and I'll walk out of the store.

He's been citing the public's right to know. This counteracts directly with the Defense Department's premise on classified information, which is need to know. And I wonder how he feels about the public's need to know the information which he thinks is important...

REHM: All right. Thanks for calling.

KARP: Well, it's never been the case in the country that we regarded the government as the sole judge of what it thinks the American people should know. That's why you have a First Amendment.

You know, back in the Constitutional Convention days, the people who had -- a lot of people contended that we didn't need a Bill of Rights because the government was perfectly balanced. The Congress checks the President, the President checks Congress, and we shouldn't have a Bill of Rights. Well, there were people, and they triumphed and they said, "Balance the government. It may be checked. It may be -- but we would like to make sure that the ultimate arbiters, the sovereign people have their rights spelled out."

So, when I hear somebody talking about the need by the government -- that is, the Executive Branch judging for itself everything about what it considers the country is entitled to know, you're conceding what no one has ever wanted to concede in this country.

REHM: Fascinating.

KARP: And also, you're talking about -- you're talking about -- you're talking as if the Morison case was routine. The Morison case changes everything, everything. The country was -- I'm sure the caller was fairly content with the way the country was about three weeks ago. Well, it's changed radically in the last five days.

REHM: You're on the air.

MAN: I'm a very big person on defense. But, of course,

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I'm against what people call waste, I call corruption and graft. But I have a very serious question for your guest.

I believe there's a check-and-balance in this situation that he's discussing, in that if the material that's taken, that's in question is very sensitive material, indeed a threat to our security to be released, and on the other hand, if the material is just material that would expose waste and corruption in government, I believe once the material is presented to a jury, then in fact the people will make that determination. And if it is just frivolous material that's exposing waste in government, the trial-by-jury process will put it back into the people's hands, where it belongs.

So, I can't really understand why he's so upset at what the Administration has done in this particular case.

REHM: All right, sir. Thanks for your call.

I think our caller perhaps missed your earlier comments about the usefulness of the information that was actually published.

KARP: Yes. The information that was published was of no use whatever to the Soviet Union. They already had those photographs. They already had the technical manual involved.

I think we're dealing -- you have hopes that a jury, now faced with judge-made law, will in fact fly in the face of a judge. Well, they didn't do it in the Morison case. They might have said that this is nonsense, that Morison doesn't look any way like a spy, and that the secrets, a secret which was not much of a secret, since the Soviet Union had it, cannot be regarded, under the law, as something closely held. They might have laughed when the prosecutors said they discovered that Morison was the culprit by fingerprints on the photographs.

Here's a man who works for Jane's magazine. Right? And the photographs appear. So you might have thought they would laugh at the prosecutor there.

You might have thought they would laugh when the prosecution brought up a witness who said that the information was not new to the Soviet Union, but it was about three-four months fresher than their information was. Well, the jury didn't laugh.

So, I am a great friend of juries. But this is an issue which when you have judge-made law, it's a terrible thing to make the jurors the defendants [sic] of liberty.

REHM: You are having a hard time convincing the people,

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perhaps, that they have lost or are about to lose something which you regard as very precious because, somehow, they have not been convinced that they've lost anything, number two. And that, number two, if what they -- if they have lost something that is very precious.

KARP: Well, if people think their ignorance is bliss, there's nothing I can do about it. But it's not going to be very blissful.

REHM: What do you want people to do in reaction to your article?

KARP: In reaction to my article?

REHM: Uh-huh.

KARP: I mean what do you want a free people to do when their liberties are being slowly, or rapidly, in fact, eroded? And by liberty I mean the ability to hold the government accountable. I think they ought to remember the first principles of the country. They ought to remember that the government is not the sole arbiter of its own worth, of its own policies. They should remember that the press -- they should not be taken in by the kind of propaganda which says that the press is powerful. The press is nothing if it didn't have readers. What would the New York Times -- the New York Times owns half the forests in Canada. I assure you it would be nothing, absolutely nothing, if the two million readers of The Times disappeared.

So, the first thing, I think, is to simply -- we have to clear our minds of a lot of cant and rubbish and lies, like the power of the press and the media, and the notion that people who -- whistle-blowers whose careers are at stake, who are, at the best of times, sent to Coventry, shunned, whose jobs are threatened, are actually giving information to the press because they want to make a little money. That is really, in fact, an insult.

But I can only say for the larger question, you just simply have to go back to the principles of the country.

REHM: Good morning.

MAN: I've got a problem with the way your current guest is looking at this case with the freedom of the press. When you look at what Mr. Morison did, the item he published, or had published, has no general public interest. It might be to the readers of the Jane's Defense Weekly, but not to general interest. And because of that, you can't quite compare him with a whistle-blower. That is just terrible.

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KARP: No, I'm not comparing...

MAN: A whistle-blower...

KARP: No, no, no, no, no, no. Please. The Morison case is a case. It is also a precedent. You must understand that. We're not going to sit here all day and discuss the character of Morison. The character of Morison means nothing. The issue is that now you can convict people for giving classified information about national defense to the press, and you could not do it before.

MAN: But I disagree with calling him a whistle-blower...

KARP: I didn't call him a whistle...

REHM: He hasn't called him a whistle-blower.

KARP: I didn't call him a whistle-blower. I'm talking about the effects in the future.

You know, Napoleon once said he recommended hanging somebody in order to, what he said, encourage the others. That's what the Morison conviction does. It's a weapon to be used over the heads of men no doubt more honorable than Mr. Morison.

REHM: All right, sir. Thanks for calling.

You're on the air.

MAN: I have a question. I was wondering whether or not the implications of this case would lead to the prosecution of any members of the Administration who routinely use leaks that they feel are in their own best interest to further their own political whims in the Administration. And, you know.

KARP: Well, I mean, everything is now up in the air. If a high-ranking official leaks the information, it's called an authorized leak, and therefore he's not under the Espionage Act. In fact, that is exactly the issue. You will now have -- the entire realm of national security information will be official government handouts. That's what the Morison conviction means.

REHM: All right, sir. Thanks for calling.

Mr. Karp, do you think it is now up to the press to generate public opposition to the Administration's policies? Or is it up to the Congress? Is it up to the courts? How do you see the issue going forward from here?

KARP: Well, it's up to Congress. It's absolutely up to

Congress. It's up to public men of every kind to say something.

As I said before, I don't -- the press cannot take up cudgels for itself. It's easily condemned as a special interest serving itself. It has to be able to say that -- it has to quote Tip O'Neill or it has to quote an opposition leader. It has to quote men of distinction and power and responsibility. And then it's a new story. Otherwise they're just writing a couple of editorials, and it doesn't do any good. So you need elected officials to come up and defend the rights of the people.

REHM: And your piece now in the New York Times will appear tomorrow morning.

KARP: Yes.

REHM: I'll be looking forward to reading it.

Walter Karp. He is a contributing editor of Harper's magazine and the author of "Liberty under Siege."